IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3504 OF 2006
IN
CRIMINAL APPEAL NO. OF 2006

Mrs. Florence Benny Boodle
Age: about 59 yrs,
Occupation: Social Work,
R/at B-10 Sabba Vihar Co-op.
Housing Society Wanaorie
Pune 410 040. ....Applicant.

V/s

Mrs. Sudha Sam Kukde,
Age:- about 50 yrs,
Occupation: Social Work,
R/at 690 Nana Peth, Pune 411002. ....Respondent.

Anil Subramanian for the applicant.

Mr. Anil V. Dhavale for Respondent No.1.

Mr. Y.M. Nakhwa, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 15th October, 2007

P.C.:

1. I had suggested that the parties should try to settle the case. However, it appears that differences between parties cannot be resolved.

2. Heard the learned Counsel for the applicant and the learned Counsel appearing on behalf of Respondent No.1.

3. Appeal is taken up for hearing forthwith.

4. Applicant is the original complainant. She is aggrieved by the order passed by the Trial Court dismissing her complaint for want of prosecution. The Trial Court has observed that after plea of the accused was recorded, the complainant remained absent and did not attend the court on the said date and, therefore, Trial Court was constrained to dismiss the complaint. An affidavit has been filed by the advocate appearing on behalf of the complainant in which he has stated that after a plea of the accused was recorded, the case was adjourned and, accordingly, he had informed the complainant.

5. The learned Counsel appearing on behalf of Respondent No.1, on the other hand, has submitted that the record of the Trial Court cannot be questioned by the complainant or his advocate.

6. It is no doubt true and it is a settled position in law that the parties to the case cannot question the record maintained by the Court. Be that as it may, the fact remains that there was some misunderstanding on the part of the complainant and, therefore, she did not remain present. Discretion which is vested in Court under section 256 of the Code of Criminal Procedure has to be exercised in a proper manner. In my view, Trial Court ought to have given one more opportunity to the complainant to remain present. Under these

circumstances, impugned order is set aside. Matter is remanded to the Trial Court. Trial Court shall decide the case as expeditiously as possible and, in any case, within a period of six months.

7. Issuance of certified copy is expedited.

(V.M. KANADE, J.)